

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jerry D. Pough,

Petitioner

v.

Jeremy Bean, et al.,

Respondents

Case No. 2:24-cv-02098-CDS-EJY

**Order Denying Petition for Writ of
Mandamus and Other Relief**

[ECF Nos. 1-1, 1-2, 11, 12]

Petitioner Jerry D. Pough, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted an application to proceed *in forma pauperis*, a motion for production of all illegally seized property, a petition for writ of mandamus, a motion to be present and heard, and a motion for hearing. ECF Nos. 1, 1-1, 1-2, 11, 12. I now grant the application to proceed *in forma pauperis* and address the petition and other motions.

I. In forma pauperis application

Pough’s application to proceed *in forma pauperis* is granted. ECF No. 1. Based on the information regarding Pough’s financial status, I find that Pough is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Pough will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

II. Discussion**A. Petition for Writ of Mandamus (ECF No. 1-2)**

Pough’s handwriting is difficult to read. Based on what I can discern, Pough’s petition for writ of mandamus alleges Pough’s various grievances with the NDOC and his issues with past rulings by Judge Miranda Du and Judge James Mahan. *See generally* ECF No. 1-2. Pough asks me to order the NDOC to provide him medical care, return his missing property boxes, and return his money. *Id.* Pough also may be seeking his immediate release. *Id.*

1 “The Supreme Court and all courts established by Act of Congress may issue all writs
2 necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and
3 principles of law.” 28 U.S.C. § 1651. However, the Supreme Court has held that the use of a writ of
4 mandamus is a “drastic” remedy that is only to be invoked in “extraordinary situations.” *Kerr v. U.*
5 *S. Dist. Ct. for N. Dist. of California*, 426 U.S. 394, 402 (1976). Traditionally, a writ of mandamus has
6 been “used in the federal courts only to confine an inferior court to a lawful exercise of its
7 prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Will v.*
8 *United States*, 389 U.S. 90, 95 (1967) (internal quotations omitted). Although the courts have “never
9 confined themselves to an arbitrary and technical definition of jurisdiction, it is clear that only
10 exceptional circumstances amounting to a judicial usurpation of power will justify the invocation
11 of this extraordinary remedy.” *Id.* (listing situations when the writ has been invoked). A writ of
12 mandamus is “the appropriate remedy to enforce the performance of some duty enjoined by law,
13 where there is no other adequate remedy.” *Bd. of Comm'rs of Knox Cnty. v. Aspinwall*, 65 U.S. 376, 376
14 (1860).

15 I deny Pough’s petition for writ of mandamus because it is improper. Pough’s petition for
16 writ of mandamus is not seeking to have a court direct a lower court to exercise its duty. Instead,
17 Pough is attempting to use a petition to avoid filing a civil rights action under 42 U.S.C. § 1983. In
18 the past, Pough has attempted to file multiple injunctive relief motions and petitions for writ of
19 mandamus in lieu of a complaint. *See Pough v. Neven*, 3:15-cv-00443-MMD-VPC. In that case, the
20 court explained to Pough that his issues fell into two categories—§ 1983 civil rights and habeas
21 corpus—and explained when each action was appropriate. *See* ECF No. 12 in *Pough v. Neven*, 3:15-
22 cv-00443-MMD-VPC (explaining that, if Pough seeks to challenge his conviction, he may file a
23 habeas corpus petition and, if he seeks to challenge his conditions of confinement, including
24
25
26

1 seizure of his property, denial of medical treatment, etc., then he must file a civil rights complaint
2 under § 1983).¹

3 In this case, I note that the magistrate judge gave Pough two opportunities to file a civil
4 rights complaint, but Pough ignored those instructions. *See* ECF Nos. 3, 10. I now deny the
5 petition and close this case. If Pough wants to pursue the issues raised in his petition in a civil
6 rights action, he may file a new application to proceed *in forma pauperis* and a civil rights complaint
7 in a new case.

8 **B. Motion for Production of all Illegally Seized Property (ECF No. 1-1)**

9 Again, Pough's handwriting is difficult to discern but he appears to seek the return of his
10 property boxes and 16 years plus of confiscated items from the NDOC. ECF No. 1-1. I deny this
11 motion. If Pough is challenging the confiscation of his items from prison officials, he must initiate
12 a § 1983 civil rights action.

13 **C. Motions for Hearings (ECF Nos. 11, 12)**

14 Pough's motions for a hearing are denied as moot because Pough's petition for writ of
15 mandamus is denied and the case is closed.

16 **III. Conclusion**

17 I therefore order that Pough's application to proceed *in forma pauperis* [ECF No. 1] without
18 having to prepay the full filing fee is **granted**. Plaintiff will **not** be required to pay an initial
19 installment fee. Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, even
20 though this action is dismissed.

21 I order that, pursuant to 28 U.S.C. § 1915, the Nevada Department of Corrections will
22 forward payments from the account of Jerry D. Pough, #1128263 to the Clerk of the United States
23 District Court, District of Nevada, 20% of the preceding month's deposits (in months that the
24 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the

25 _____
26 ¹ It is unclear to me whether Pough is dissatisfied with Judge Du's and Judge Mahan's previous rulings in
his civil rights and habeas cases and is attempting to undermine those decisions by filing a petition for writ
of mandamus. If Pough is dissatisfied with those previous rulings, he must appeal those decisions to a
higher court.

1 Court will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will
2 send a copy of this order to the Chief of Inmate Services for the Nevada Department of Corrections
3 at formapauperis@doc.nv.gov.

4 I order that the Clerk of the Court file the petition for writ of mandamus (ECF No. 1-2).

5 I order that the petition for writ of mandamus [ECF No. 1-2] is denied.

6 I order that the motion for production of all illegally seized property [ECF No. 1-1] is
7 denied.

8 I order that the motions for a hearing [ECF Nos. 11, 12] are denied as moot.

9 The Clerk of the Court is directed to close the case and enter judgment accordingly.

10 I order that any *in forma pauperis* appeal from this order would not be taken "in good faith"
11 pursuant to 28 U.S.C. § 1915(a)(3).

12 Dated: June 20, 2025

13
14 
15 Cristina D. Silva
16 United States District Judge
17
18
19
20
21
22
23
24
25
26